IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5137 of 2007()

CRIME NO. 268/07 OF ERATTUPETTA POLICE STATION,KOTTAYAM DIST.
CRMP.1822/2007 of DISTRICT COURT, KOTTAYAM

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PETITIONER/A2

LUKKA THOMAS, AGED 67 YEARS
KOCHAMBAZHATHUMKAL, PADANNAMACKAL
POONJAR NADUMBHAGAM VILLAGE
POONJAR, KOTTAYAM DIST.

BY ADV. SRI.GEORGE MATHEW

RESPONDENT/COMPLAINANT:

SUB INSPECTOR OF POLICE, ERATTUPETTA POLICE
STATION, ERATTUPETTA, THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5137 of 2007

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Dated this the 10th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. He faces allegation under Section 420 r/w. 34 I.P.C. The crux of the allegations is that he, in collusion with the first accused, had defrauded the complainant bank/Poonjar branch of Central Bank of India by facilitating pledging of non-genuine ornaments by the first accused before the bank. Those ornaments were found to be not genuine gold. The petitioner as appraiser of the bank had on three occasions not reported to the bank that the gold pledged by the first accused were not genuine and was spurious. It is the case of the complainant that such course was resorted to by accused 1 and 2 in collusion to defraud and cause loss to the bank. Crime has been registered. Investigation is pending. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He did not share any common intention with the first accused. The first accused had earlier

transactions with the bank. There is no reason to suspect the bonafides of the first accused. In these circumstances the petitioner, a person aged 67 years, does not deserve to endure the trauma of arrest and detention. Anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Prosecutor opposes the application. He submits that all indications available clearly show that the petitioner, in collusion with the first accused, had omitted to report to the bank that the gold ornaments pledged by the first accused were not genuine. His application for bail was dismissed by the learned Sessions Judge. There is no merit in the contention laboriously urged that the fraud was detected only when the gold ornament was broken down and it was found that within the ornaments some heavy metal was concealed.

4. I have considered all the relevant inputs. I find merit in the opposition raised by the learned Prosecutor. I am unable to discern any such circumstance which would justify the invocation of the extra ordinary discretion under Section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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